

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Request by the Association for Local)
Telecommunications ("ALTS") for)
Clarification of the Commission's Rules) CCB/CPD 97-30
Regarding Reciprocal Compensation for)
Information Service Provider Traffic)

COMMENTS OF AT&T CORP.

Pursuant to the Public Notice released on July 2, 1997, AT&T Corp. ("AT&T") respectfully submits its Comments on the letter filed by the Association for Local Telecommunications ("ALTS") requesting expedited clarification of the Commission's rules regarding the rights of a competitive local exchange carrier ("CLEC") to receive reciprocal compensation pursuant to section 251(b)(5) of the Telecommunications Act of 1996 for the transport and termination of traffic to CLEC subscribers that are information service providers ("ISPs"). AT&T supports ALTS' request.

By letter dated June 20, 1997 to the Chief, Common Carrier Bureau, ALTS (at 1) asks the Commission to issue a letter clarifying "that nothing in the Local Competition Order requires [calls to ISPs originating and terminating within a local calling area] to be handled differently than other local traffic is handled under current reciprocal compensation agreements in situations where local calls to ISPs are exchanged between ILECs and CLECs." According to ALTS (at 4-5), Bell Atlantic, NYNEX and several other ILECs have taken the position that where local calls to ISPs are exchanged between ILECs and CLECs, such traffic is not eligible for reciprocal compensation. ALTS

contends that this practice is based on a misreading of the Commission's Local Competition Order,¹ and confuses the jurisdictional nature of such traffic with their regulatory classification for access charge purposes (id.). ALTS states (at 7) that exemption of ISP traffic from reciprocal compensation arrangements when that traffic is handed off between an ILEC and a CLEC would amount to discriminatory treatment of CLECs because, according to ALTS, the ILECs do not exclude such traffic from reciprocal compensation arrangements with an adjacent LEC within the same calling area.

AT&T has taken the position before the Commission that ISP traffic is overwhelmingly and inseparably interstate in nature and is unlike local business traffic because, for the vast majority of traffic, it is switched by the ISP at its local POP to distant data centers or Internet sites located in other states (or other countries). On this basis, AT&T has supported assessment of cost-based interstate access charges on ISPs, as on all other interstate users of the local public switched telephone network.² Notwithstanding the strong evidence that ISPs use the local network in the same manner as IXC's, and in particular in a manner identical to the way in which an emerging MCI and other new common carriers initially purchased line-side "Feature Group A" access out of interstate access tariffs, the Commission in its Access Charge Order retained the existing artificial

¹ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, First Report and Order, Released August 8, 1996 ("Local Competition Order").

² See Comments of AT&T Corp., In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and Usage of the Public Switched Network by Information Service and Internet Service Providers, CC Docket Nos. 96-262, 94-1, 91-213 and 96-263, filed March 24, 1997, pp. 28-34.

classification of ISPs as "end users." By maintaining this classification in Part 69 of the Commission's Rules, the Commission explicitly exempts ISPs from the requirement to purchase access pursuant to interstate access tariffs and enables them instead to purchase local exchange services out of local tariffs.³

Although AT&T disagrees with the Commission's conclusions in this regard, the Commission's decision to classify ISPs as "end users" renders those "end users" no different than other business customers of LECs for access charge purposes, and especially dictates their treatment to be the same as other business customers who also switch incoming calls to distant locations.⁴ Moreover, the Local Competition Order does nothing to alter this classification. To the contrary, the Commission there confirmed that "[o]ur authority to regulate interstate access charges remains unchanged by the 1996 Act"⁵ and nothing in that Order addressed or affected the Commission's classification of ISPs under those rules.

Accordingly, AT&T agrees with ALTS (at 6) that "[w]hile the end points of the related calls may well be 'interexchange' for the purpose of determining the Commission's jurisdiction under the Communications Act, the relevant point here is that

³ In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and End User Common Line Charges, First Report and Order, CC Docket Nos. 96-262, 94-1, 91-213 and 95-72, released May 16, 1997 ("Access Charge Order"), ¶¶ 344-348.

⁴ See id. at ¶ 345 ("many of the characteristics of ISP traffic (such as large numbers of incoming calls to Internet service providers) may be shared by other classes of business customers").

⁵ Local Competition Order, ¶ 358.

[the] Commission has ruled that ISPs be treated as end users, meaning that the inbound local call is not 'interexchange' for the purposes of its access charge regime."

AT&T further agrees with ALTS (at 3-4) that for the Commission to rule to the contrary would conflict with both the treatment of that traffic as local under the Commission's rulings and the ILECs' practices for their own services. For example, although they object to the requirement to do so, no ILEC has, to AT&T's knowledge, refused to provide ISPs with its own state-tariffed business lines or private lines on the ground that the ISPs are not "local" service customers. Similarly, the ILECs have not reported any of their own business line revenues, expenses or investment as "interstate" on the basis of ISP use of those lines.⁶

Where, as here, the ILECs refuse to entertain reciprocal compensation requests by competitive LECs who are developing their own business relationships with ISPs, the anticompetitive implications of such actions are clear. Allowing ILECs to refuse compensation to interconnecting carriers with whom they compete for ISP traffic would plainly discriminate against those competitors to the benefit of the ILECs' own ISP offerings. Denying the CLECs the ability to receive reciprocal compensation when ISPs are their customers would cause CLEC costs to increase, render their services less economically attractive, and thus deprive ISPs of a competitive alternative to ILEC

⁶ See, e.g., Comments of U S West, Inc., In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and Usage of the Public Switched Network by Information Service and Internet Service Providers, CC Docket Nos. 96-262, 94-1, 91-213 and 96-263, filed March 24, 1997, p. 22 ("because of the manner in which the ESP exemption operates, all of this [ESP/Internet] usage is calculated as intrastate for separations purposes, and investment and expenses utilized by LECs to provide interstate services are instead driven to the intrastate jurisdiction").

services. In short, sanctioning such action on the part of the ILECs would undermine the very "market-based" competition that the Commission mandated in its Access Charge Order.⁷ And if ALTS is correct that ILECs include ISP traffic in reciprocal compensation arrangements with adjacent LECs while denying such compensation to CLECs in their local serving areas, such behavior would be unreasonably discriminatory on that basis as well.

WHEREFORE, for the reasons stated above, AT&T respectfully requests that the Commission declare that CLECs are eligible for reciprocal compensation for the transport and termination of traffic to their ISP subscribers.

Respectfully submitted,

AT&T CORP.

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⁷ See Access Charge Order, ¶¶ 44, 260.

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 17th day of July, 1997, a copy of the foregoing "Comments of AT&T Corp." was served by facsimile and mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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